

HOUSE CS FOR CS FOR SENATE BILL NO. 20(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/21/06

Referred: Finance

Sponsor(s): SENATOR DYSON

REPRESENTATIVES Lynn, Gatto

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is
6 intended to limit or alter a woman's right to choose the outcome of her pregnancy, as
7 guaranteed by the Constitution of the United States and the Constitution of the State of
8 Alaska.

9 * **Sec. 2.** AS 11.41 is amended by adding new sections to article 1 to read:

10 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the crime
11 of murder of an unborn child if the person

12 (1) with intent to cause the death of an unborn child or of another
13 person, causes the death of an unborn child;

14 (2) with intent to cause serious physical injury to an unborn child or to
15 another person or knowing that the conduct is substantially certain to cause death or

1 serious physical injury to an unborn child or to another person, causes the death of an
2 unborn child;

3 (3) while acting alone or with one or more persons, commits or
4 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
5 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
6 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the
7 first or second degree, robbery in any degree, or misconduct involving a controlled
8 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
9 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
10 immediate flight from that crime, any person causes the death of an unborn child;

11 (4) knowingly engages in conduct that results in the death of an unborn
12 child under circumstances manifesting an extreme indifference to the value of human
13 life; for purposes of this paragraph, a pregnant woman's decision to remain in a
14 relationship in which domestic violence, as defined in AS 18.66.990, has occurred
15 does not constitute conduct manifesting an extreme indifference to the value of human
16 life.

17 (b) A person may not be convicted under (a)(3) of this section if the only
18 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
19 and the unborn child killed is the intended victim of the defendant. However, if the
20 defendant causes the death of another unborn child, the defendant may be convicted
21 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
22 conviction of murder in the first degree or murder in the second degree, murder of an
23 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

24 (c) Murder of an unborn child is an unclassified felony.

25 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits the
26 crime of manslaughter of an unborn child if, under circumstances not amounting to
27 murder of an unborn child, the person intentionally, knowingly, or recklessly causes
28 the death of an unborn child.

29 (b) Manslaughter of an unborn child is a class A felony.

30 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
31 person commits the crime of criminally negligent homicide of an unborn child if, with

1 criminal negligence, the person causes the death of an unborn child.

2 (b) Criminally negligent homicide of an unborn child is a class B felony.

3 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
4 11.41.170 do not apply to acts that

5 (1) cause the death of an unborn child if those acts were committed
6 during a legal abortion to which the pregnant woman consented or a person authorized
7 by law to act on her behalf consented, or for which such consent is implied by law;

8 (2) are committed under usual and customary standards of medical
9 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy; or

10 (3) are committed by a pregnant woman against herself and her own
11 unborn child.

12 * **Sec. 3.** AS 11.41 is amended by adding new sections to article 2 to read:

13 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A person
14 commits the crime of assault of an unborn child in the first degree if

15 (1) that person recklessly causes serious physical injury to an unborn
16 child by means of a dangerous instrument;

17 (2) with intent to cause serious physical injury to an unborn child or to
18 another person, that person causes serious physical injury to an unborn child;

19 (3) that person knowingly engages in conduct that results in serious
20 physical injury to an unborn child under circumstances manifesting extreme
21 indifference to the value of human life; for purposes of this paragraph, a pregnant
22 woman's decision to remain in a relationship in which domestic violence, as defined in
23 AS 18.66.990, has occurred does not constitute conduct manifesting an extreme
24 indifference to the value of human life; or

25 (4) that person recklessly causes serious physical injury to an unborn
26 child by repeated assaults using a dangerous instrument, even if each assault
27 individually does not cause serious physical injury.

28 (b) Assault of an unborn child in the first degree is a class A felony.

29 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A
30 person commits the crime of assault of an unborn child in the second degree if

31 (1) with intent to cause physical injury to an unborn child or to another

1 person, that person causes serious physical injury to an unborn child;

2 (2) that person recklessly causes serious physical injury to an unborn
3 child; or

4 (3) that person recklessly causes serious physical injury to an unborn
5 child by repeated assaults, even if each assault individually does not cause serious
6 physical injury.

7 (b) Assault of an unborn child in the second degree is a class B felony.

8 **Sec. 11.41.289. Applicability of AS 11.41.280 and 11.41.282.** AS 11.41.280
9 and 11.41.282 do not apply to acts that

10 (1) cause serious physical injury or physical injury to an unborn child
11 if those acts were committed during a legal abortion to which the pregnant woman
12 consented or a person authorized by law to act on her behalf consented, or for which
13 consent is implied by law;

14 (2) are committed under usual and customary standards of medical
15 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy; or

16 (3) are committed by a pregnant woman against herself and her own
17 unborn child.

18 * **Sec. 4.** AS 11.81.250(a) is amended to read:

19 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
20 title, except murder in the first and second degree, attempted murder in the first
21 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
22 in the first degree, **murder of an unborn child**, sexual assault in the first degree,
23 sexual abuse of a minor in the first degree, misconduct involving a controlled
24 substance in the first degree, and kidnapping, are classified on the basis of their
25 seriousness, according to the type of injury characteristically caused or risked by
26 commission of the offense and the culpability of the offender. Except for murder in the
27 first and second degree, attempted murder in the first degree, solicitation to commit
28 murder in the first degree, conspiracy to commit murder in the first degree, **murder of**
29 **an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first
30 degree, misconduct involving a controlled substance in the first degree, and
31 kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

* **Sec. 5.** AS 11.81.250(b) is amended to read:

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

* **Sec. 6.** AS 11.81.900(b) is amended by adding a new paragraph to read:

(64) "unborn child" means a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

* **Sec. 7.** AS 12.55.035(b) is amended to read:

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$10,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

* **Sec. 8.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree **or murder of an unborn child under AS 11.41.150(a)(1)** shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

1 (3) the court finds by clear and convincing evidence that the defendant
2 subjected the murder victim to substantial physical torture; or

3 (4) the defendant is convicted of the murder of and personally caused
4 the death of a person, other than a participant, during a robbery.

5 * **Sec. 9.** AS 12.55.125(b) is amended to read:

6 (b) A defendant convicted of attempted murder in the first degree, solicitation
7 to commit murder in the first degree, conspiracy to commit murder in the first degree,
8 kidnapping, or misconduct involving a controlled substance in the first degree shall be
9 sentenced to a definite term of imprisonment of at least five years but not more than
10 99 years. A defendant convicted of murder in the second degree **or murder of an**
11 **unborn child under AS 11.41.150(a)(2) - (4)** shall be sentenced to a definite term of
12 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
13 of murder in the second degree shall be sentenced to a definite term of imprisonment
14 of at least 20 years but not more than 99 years when the defendant is convicted of the
15 murder of a child under 16 years of age and the court finds by clear and convincing
16 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a
17 legal guardian, or a person occupying a position of authority in relation to the child; or
18 (2) caused the death of the child by committing a crime against a person under
19 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of
20 authority" have the meanings given in AS 11.41.470.